

FILED IN THE
U.S. DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

Jun 04, 2019

SEAN F. MCAVOY, CLERK

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

UNITED STATES OF AMERICA,

Plaintiff,

v.

ADRIAN FELIPE VILLA,

Defendant.

No. 4:18-cr-06060-EFS

**ORDER DENYING
DEFENDANT'S MOTION TO
SUPPRESS AND REQUEST FOR
FRANKS HEARING**

A motion hearing occurred in the above-captioned case on June 3, 2019. Before the Court was Defendant Adrian Felipe Villa's Motion to Suppress and Request for *Franks* Hearing, ECF No. 45. Villa moved to suppress evidence that Pasco Police Department officers obtained through searches of his girlfriend's apartment. Villa also requested a hearing under *Franks v. Delaware*, 438 U.S. 154 (1978), in relation to a telephonic search warrant affidavit. At the hearing, the Court orally denied Villa's motion. This Order memorializes and supplements the Court's oral ruling, which is incorporated herein.

Villa argues police violated his Fourth Amendment rights by entering and searching the premises without a warrant, and by deliberately or recklessly omitting material information from the subsequent search warrant affidavit. But under *United*

1 *States v. Schram*, 901 F.3d 1042 (9th Cir. 2018), Villa lacked a legitimate
2 expectation of privacy in the place searched because a no-contact order prohibited
3 him from being there. Villa readily acknowledges the likelihood of this conclusion
4 while advancing good faith arguments for why he is nevertheless entitled to the relief
5 he seeks. The Court concludes *Schram* is controlling and, as such, forecloses Villa's
6 Fourth Amendment challenge. The Court denies Villa's motion accordingly.

7 "An individual has a 'legitimate expectation of privacy' if: (1) the individual
8 demonstrates a subjective expectation of privacy in the place being searched, and
9 (2) this subjective expectation is one 'that society accepts as objectively
10 reasonable.'" *Schram*, 901 F.3d at 1044 (quoting *California v. Greenwood*, 486 U.S.
11 35, 39 (1988)).

12 *Schram* held "an individual violating a court no-contact order is on property
13 that the law prevents him from entering[and] therefore . . . lacks a legitimate
14 expectation of privacy in that place and may not challenge its search on Fourth
15 Amendment grounds." 901 F.3d at 1046. Here, the Pasco Municipal Court's no-
16 contact order prohibited Villa from "[e]ntering or knowingly coming or remaining
17 **within 500 feet** of the protected person(s)'s residence." ECF No. 72-2 at 3. It is
18 undisputed that Villa's presence inside the place searched violated the no-contact
19 order.

20 Villa argues *Schram* is not controlling because the no-contact order was

1 invalid under Washington state law where there was no actual “victim” of domestic
2 violence to protect. ECF No. 72 at 2–7. The Court disagrees. In the no-contact order,
3 the sentencing court expressly found Villa’s girlfriend was the “victim” of his
4 domestic violence offense:

5 Based upon the certificate of probable cause and/or other documents
6 contained in the case record, testimony, and the statements of counsel,
7 the court finds that the defendant being present before the [Pasco
8 Municipal] Court on [September 10, 2018] and having been charged
9 with a **DOMESTIC VIOLENCE OFFENSE** further finds that the
10 defendant being a credible threat to the victim, and in order to prevent
11 possible recurrence of violent acts against the victim; **NOW**
12 **THEREFORE, IT IS HEREBY ORDERED** that a **DOMESTIC**
13 **VIOLENCE NO CONTACT ORDER** shall be entered pursuant to
14 RCW 10. 99 in favor of:

15 Victim #1: Arceo, Jessica

16 ECF No. 72-2 at 3.

17 It would be improper for the Court to question this finding here. But to be
18 sure, Washington state law supports this finding. Villa was charged with assaulting
19 his girlfriend, then violating the pretrial no-contact order protecting her. *See* ECF
20 No. 72-1 at 2–3; ECF No. 72-2 at 1–2. Villa pleaded guilty to the charge of violating
a no-contact order, and another simple assault charge, in exchange for dismissal of
the domestic violence assault charge. *See* ECF No. 72-1 at 1–2; ECF No. 72-2 at 1–
2. Violating a no-contact order is still considered domestic violence where, as here,
the protected person was the defendant’s family or household member. *See* Wash.
Rev. Code (“RCW”) § 10.99.020(5)(r); *see also* ECF No. 72-3 at 1. Such a family

1 or household member is necessarily a “victim” under Washington state law because
2 he or she “has been subjected to domestic violence” by the defendant’s violation of
3 a no-contact order. RCW 10.99.020(8). Because the no-contact order here was part
4 of Villa’s sentence for a domestic violence offense in which his girlfriend was the
5 “victim,” the no-contact order was valid under Washington state law. *See* RCW
6 10.99.050(1).

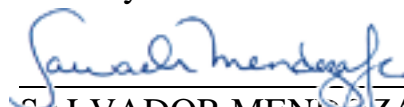
7 Villa also argues *Schram* was wrongly decided. ECF No. 72 at 7–8. But it is
8 axiomatic that this Court cannot overturn binding Ninth Circuit precedent. *Schram*
9 is controlling and, as such, forecloses Villa’s Fourth Amendment challenge. In sum,
10 Villa had no legitimate expectation of privacy in the place searched. The Court does
11 not reach the parties’ remaining contentions.

12 Accordingly, **IT IS HEREBY ORDERED:**

13 Defendant’s Motion to Suppress and Request for *Franks* Hearing,
14 **ECF No. 45**, is **DENIED**.

15 **IT IS SO ORDERED.** The Clerk’s Office is directed to enter this Order and
16 provide copies to all counsel.

17 **DATED** this 4th day of June 2019.

18 
19 SALVADOR MENDOZA, JR.
United States District Judge